IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1033

LINDA MCINNIS, ET AL.,
Appellants,

v.

RICHARD B. OGILVIE, ET AL.,
Appellees.

On Appeal from the United States District Court, Northern District of Illinois, Eastern Division

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MOTION FOR LEAVE TO FILE BRIEF FOR

The Urban Coalition
National Education Association of the United States
The Research Council of the Great Cities Program For School Improvement
The Lawyers' Committee for Civil Rights Under Law

AS AMICI CURIAE

In Support of the Jurisdictional Statement

The Urban Coalition, National Education Association of the United States, The Research Council of the Great Cities Program for School Improvement, and the Lawyers' Committee for Civil Rights Under Law, hereby respectfully move for leave to file a brief in support of the Jurisdictional Statement in the above-entitled case. Counsel for Appellants have consented to the filing of the attached brief. Counsel for Appellees have not consented to its filing.

The interests of Amici and their reasons for requesting leave to file are as follows:

1. The Urban Coalition, a private non-profit corporation whose goal is the revitalization of America's cities, has established as one of its major objectives the extension of quality education, particularly to those students from disadvantaged backgrounds. Essential to this task is the removal of the gross inequities resulting from State education finance formulas which presently favor suburban areas at the expense of urban centers. The present case challenges the education financing system of the State of Illinois. However, the factual pattern which the case presents and the important Constitutional issues it raises extend to metropolitan centers across the nation. It is for this reason—because of the importance of this case to the future of American urban education—that the Urban Coalition requests leave of this Court to file the attached brief.

2. The National Education Association of the United States, founded in 1857, is a corporation which was chartered by special act of Congress in 1906. Its membership embraces more than one million professional educators throughout the United States and its territories. The purpose of the organization is to elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States. In furtherance of this purpose the Association has long worked to insure the adequate and equitable financing of public education throughout the nation. The NEA has worked for more than a century to provide equal educational opportunity for all American children. Though the present case challenges only the educational financing system of Illinois, it raises the applicability of the Equal Protection Clause to State allocation of resources to school children, an issue which has major implications for the financing of public education in every community, urban, suburban and rural, of America. The pendency of similar suits and the complex nature of the

facts in each one make it highly desirable that a full record in this case, upon which this Court can resolve the Constitutional issue and enunciate judicial standards, be developed. For all these reasons the National Education Association of the United States joins in requesting leave of this Court to file the attached brief.

3. The Research Council of the Great Cities Program for School Improvement, incorporated in 1961 as a non-profit organization, is comprised of twenty of the largest city school districts in the United States. Member cities include Baltimore, Boston, Buffalo, Chicago, Cleveland, Columbus, Dallas, Denver, Detroit, Los Angeles, Memphis, Minneapolis, Milwaukee, New York, Philadelphia, Pittsburgh, St. Louis, San Diego, San Francisco and Washington, D. C. The activities of the Council are governed by a board of directors composed of one member of the Board of Education and the Superintendent of Schools from each participating city. The organization seeks to meet the comprehensive public school needs and to improve every facet of education in its member cities. A major concern of the Research Council has been the increasing disparities in financial support to education in urban centers as compared to suburban areas. Because of its belief that such discriminatory treatment of urban centers threatens to severely handicap vast numbers of city school children in the cities it represents, the Research Council respectfully requests leave of this Court to file the attached brief.

4. The Lawyers' Committee for Civil Rights Under Law, a non-profit private corporation organized in 1963, has become increasingly concerned with urban problems. In 1968 the Committee initiated an Urban Areas Project with the aid of a grant from the Ford Foundation. In close cooperation with the Urban Coalition, the Committee's national and local offices have actively engaged the service of lawyers in an attack upon urban problems in such areas as education, housing, and economic develop-

ment. In the field of education, a National Task Force, established to concentrate on a variety of educational issues, has begun to study and assess efforts directed to the reform of educational financing. The Committee's interest in the present case arises from these concerns.

Having examined the issues presented by this case from a national perspective, and having concluded that a proper Constitutional standard exists to govern the conduct of Illinois and other States, Amici respectfully request that this Court grant leave to file the attached brief which focuses on that standard.

Respectfully submitted,

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BRIEF FOR

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National Education Association of the United States
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AS AMICI CURIAE

In Support of the Jurisdictional Statement

QUESTION PRESENTED

Whether the lower court erred in dismissing for failure to state a cause of action, Plaintiffs' claim that Illinois statutes governing the financing of public school education violate the Equal Protection Clause of the Fourteenth Amendment by creating a system under which per stu-

dent expenditures are dependent upon the value of taxable property within school districts of widely differing tax bases, thereby depriving students in poor school districts of the educational resources available to students in more wealthy districts.

PROCEEDINGS BELOW

Plaintiffs brought this class action before a three judge district court in the Northern District of Illinois. They charged that the State of Illinois, committed by its Constitution to provide public education for all students,[1] had violated the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution by creating a system for financing public education which provides to Plaintiffs' school districts per pupil expenditures "far below" those provided in other districts in the State.[2] Plaintiffs charged that despite the fact that, as the district court conceded, "nearly three-quarters of the revenue comes from local property taxes," [3] and despite the fact that great disparities exist between assessed values of taxable property in various school districts (ranging from $114,000 per pupil in the Monticello district to $3,000 in Brookport),[4] Illinois laws for the financing of public education use such property valuation as the principal basis

[1] The State has undertaken the obligation to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." Ill. Const. Art. VIII, § 1.

[2] Plaintiffs' Amended Complaint (hereinafter cited as "A.C."), ¶ 15. Since the court below dismissed Plaintiffs' complaint for failure to state a cause of action, Plaintiffs' allegations must, of course, be accepted as true.

[3] Appendix to Plaintiffs' Jurisdictional Statement (hereinafter cited as "Pl. App." and "J.S." respectively) at 7.

[4] Illinois Task Force Report, EDUCATION FOR THE FUTURE OF ILLINOIS 115 (Table 17) (1966) (hereinafter cited as "TASK FORCE REPORT"), reproduced in the Appendix to Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss (hereinafter cited as "Opposition").

for determining per pupil expenditure, and fail to provide for State supplements to rectify the resulting discrimination.[5] The district court, while conceding its jurisdiction, dismissed the amended complaint on the ground that it failed to state a cause of action. It interpreted the complaint, Amici believe erroneously, as *requiring* a determination that the Federal Constitution compels States to allocate school funds "only on the basis of pupils' educational needs." (Pl. App. at 6).

The court recognized that there "are wide variations in the amount of money available for Illinois school districts, both on a per pupil basis and in absolute terms," and that "presumably, students receiving a $1000 education are better educated than those acquiring a $600 schooling." Yet, the court found the Illinois statutes neither discriminatory nor arbitrary (Pl. App. at 6-7). It further stated that it could discern no "judicially manageable standards" upon which to grant relief.

Plaintiffs' timely appeal to this Court thus prays the Court to consider the substantial question presented by Plaintiffs' claim that the Illinois system for financing public school education, under which per pupil expenditure for education is much greater in school districts where property values are high than in Plaintiffs' school districts where such values are lower, violates the Equal Protection Clause.

STATEMENT

Illinois has assumed in its Constitution the obligation to provide public education for all children in the State.[6] The present appeal raises in this Court, for the first time,

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[5] Illinois law equalizes the *rate* at which property values may be assessed throughout the State. Ill. Rev. Stat. ch. 120, §§ 627 *et seq.* (1967). The disparities charged by Plaintiffs arise from differences in the real value of taxable property from district to district and not from differing rates at which that property is assessed.

[6] See note 1, *supra.*

the severe inequalities which flow from the financial methods by which Illinois has chosen to fulfill that obligation. These financial inequities arise because the power of local school districts to provide revenue for education is greatly limited by a factor irrelevant to education: the wide variations in the value of taxable property from district to district, which range, as noted above,[7] from $114,000 per pupil in Monticello to $3,000 in Brookport.

Plaintiffs' school districts, and the other school districts in Illinois, raise money and otherwise receive financial support in accordance with a multitude of State laws. The principal provision for public school funds is the State law authorizing each school district to impose a tax upon property within the district at any rate up to a specified ceiling.[8] The school districts in which Plaintiffs reside have set such property tax rates near the upper limit permitted by Illinois law. (A.C., ¶ 14). Accordingly, Chicago, a district in which two Plaintiffs reside, taxes at a 1.9% rate,[9] only 0.1% below the rate ceiling set for Chicago by State law.[10] Yet, despite these tax rates, Plaintiffs' districts can collect much less revenue per pupil than other districts because valuation of taxable property per pupil within them is so much lower. Thus, while Chicago, taxing at the ceiling rate of 2.0%, could obtain $460 per pupil, Monticello, which in fact only taxes at a rate of 0.5%, could obtain $2,280 per pupil at a 2.0% rate.[11] Thus, the necessary result of the wide variation in the value of taxable property per pupil, and statutory reliance on the value of district property as the primary source of

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[7] See page 2, *supra*.

[8] Illinois Rev. Stat. ch. 122, §§ 17-3, 34-54 (1967) (unless otherwise noted, all subsequent citations to Illinois statutes are to sections of ch. 122).

[9] TASK FORCE REPORT at 115 (Table 17).

[10] § 34-54.

[11] TASK FORCE REPORT at 115 (Table 17).

revenue, is wide variation in per pupil expenditure from district to district. As the court below indicated, the difference between high and low pupil expenditure per annum in elementary school districts is in the ratio of 3.0 to 1; in high school districts, 2.6 to 1; unit districts (grades 1-12), 1.7 to 1.[12]

Further, while the State supplements the school funds raised locally by property taxes collected pursuant to State law, those payments, from a State Common School Fund derived from State revenues other than the district property tax, fail to equalize the disparities resulting from the basic property tax element in the school funding machinery. Thus, the "flat" grant, which provides each district with an equal supplement for each of its students in average daily attendance,[13] has no effect on the per pupil expenditure disparity between districts with high property values and those with lower ones. Indeed, as detailed below, the grant serves to aggravate that disparity.

The "equalizer grants," also provided for by statute from the Common School Fund, do not correct the discrimination between pupils in wealthy districts and those in poor ones. While such grants provide that the State will make available to districts the difference between a $400 per pupil revenue [14] and the amount raised by taxing at a statutorily defined minimum tax rate plus the flat grant, the poorer districts cannot compensate for the inequalities in funding produced by inter-district variations in property values. Additionally, because the equalizer grant is awarded after the flat grant is added to local revenues

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[12] Pl. App. at 7. Unless otherwise noted, all subsequent references to per pupil expenditures refer to per annum figures.

[13] $54.05 per high school student and $47 per elementary school student. § 18-8.

[14] TASK FORCE REPORT at 113 suggests that the expenditures required for minimally adequate education should be $600 for elementary school students and $750 for high school students.

raised at the qualifying rate, the wealthy districts benefit in full from the flat grant, whereas the poor districts receive a reduced benefit or none at all.[15]

Hence, despite State assistance, the amounts spent on education per student in Plaintiffs' school districts are still "far below" expenditure in other Illinois districts.[16]

As Plaintiffs directly allege (A. C., ¶ 16),[17] students in Plaintiffs' districts suffer severe disadvantages relative to students in more affluent districts because the value of the property within each of those districts, in proportion to the number of students in each, is below the comparable valuation in other districts in the State.[18] Thus, the suggestion of the court below[19] that the inter-district expenditure differentials are or may be due to the low value Plaintiffs' districts attach to education, compared to either the values these districts place on other district

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[15] *See* the Appendix to this brief for a detailed explanation of the education financing statutes.

[16] *See* note 2, *supra*. It should be noted that this statement is true notwithstanding federal aid.

[17] For example, the Appendix to the Amended Complaint, Table I, indicates that the property valuation per student in the Posen district where Plaintiff Cobler attends school, is *less than half* what it is in over 50% of all districts, and *less than one-third* what it is in over 25% of all districts.

[18] As regards the financing of capital plant, students in the poorer districts could suffer even greater inequalities. This conclusion results from the great inter-district inequality in the value of taxable property and the fact that there is no State aid given for capital expenditures. (This situation was criticized in the TASK FORCE REPORT which found that the absence of State aid for capital outlay had led to "inadequate facilities. . . [and] deficiencies which directly restrict educational programs and services" [p. 129]). While the capital needed for school district investment can be raised either by the levying of a further property tax for capital purposes or by the issuance of school district bonds, rather than the property tax, the latter must, of course, eventually be levied in order to service the bonds' principal and interest.

[19] Pl. App. at 10-11.

needs or the value other districts place on education, is completely unwarranted; Plaintiffs' districts have been spending almost all the law permits them to spend on their students' education, and have assumed a tax burden, in terms of tax rate, as heavy as or heavier than the like burden assumed by most other districts in the State.

As a result of the inequalities in financial support outlined above, the "educational programs, facilities, and services" available in Plaintiffs' districts are decidedly poorer than those provided in other districts in the State (A.C., ¶ 16), and as a direct result, the education received by Plaintiffs is decidedly inferior and unequal (A.C., ¶ 18).[20]

While the variations in the value of taxable property per student in Illinois, from $114,000 to $3,000, would be serious enough if confined to that State alone, it appears that such variations are not so confined.[21] In Michigan, for example, the valuation of taxable property per student ranges from $53,156 in River Rouge to $1319 in Forsyth;[22] in California, from $306,077 in Big Creek to

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[20] As noted at page 3, *supra*, the court below itself concluded that "[p]resumably, students receiving a $1000 education are better educated than those acquiring a $600 schooling." (Pl. App. at 6-7).

[21] For state by state figures, *see* U.S. Office of Education, PROFILES IN SCHOOL SUPPORT: A DECENNIAL OVERVIEW 14-65 (1965), the data from which are charted in Wise, The Constitution and Equal Educational Opportunity, THE QUALITY OF INEQUALITY: URBAN AND SUBURBAN PUBLIC SCHOOLS 27-29 (Daly ed. 1968). *See also*, Benson, THE CHEERFUL PROSPECT ch. 2 (1965); U.S. Commission on Civil Rights, RACIAL ISOLATION IN THE PUBLIC SCHOOLS 25-31 (1967); Wise, RICH SCHOOLS, POOR SCHOOLS (1969). While statistics from States other than Illinois are not part of the Record on appeal, Amici respectfully suggest that this Court should take judicial notice of these published statistics from scholarly sources and the national dimensions of the problem which they underscore.

[22] Thomas, SCHOOL FINANCE AND EDUCATIONAL OPPORTUNITY IN MICHIGAN 20 (1968).

$3698 in Olinda;[23] in New York, from more than $200,000 to less than $5,000.[24] Similarly, expenditures per pupil also differ widely. In California, they range from $1353 to $265;[25] in New York, from $1600 to $470.[26]

Moreover, it seems to be the inner city schools which suffer disproportionately compared to their suburban counterparts. Dr. Conant found that while the latter often spent $1000 per student, the former typically received less than half that sum.[27] Nationally, spending levels in suburban schools average almost 30% in excess of the average for city schools ($573 to $449).[28] In Los Angeles, the city-suburb averages are $424-$654; in Houston, $311-$794; in Buffalo, $507-$777.[29] It has been stated that the underfinancing of city schools "has become America's most serious school problem."[30]

Such financing systems in Illinois and elsewhere have produced severe disparities between the amount of money spent on education for students in poor and wealthy localities within a given state. Because of such limitations

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[23] *See* Appendix A to the Complaint in *Serrano* v. *Priest*, No. 938254, Calif. Super. Ct., L.A. County, dismissed on the authority of the opinion below in the instant case.

[24] Allen, The State, Educational Priorities, and Local Financing, INTEGRATED EDUCATION, Sept.-Oct. 1968, pp. 55, 59.

[25] *See* Exhibit A to the Complaint in *Serrano*, *supra*, note 23.

[26] *See* Allen, *supra*, note 24, at 58.

[27] This "jolts one's notions of the meaning of equality of opportunity." Conant, SLUMS AND SUBURBS 2-3 (1961).

[28] Campbell, Inequities of School Finance, SATURDAY REVIEW, Jan. 11, 1969, p. 44.

[29] For these and other cities, *see* Advisory Comm'n on Intergovernmental Relations, 2 REPORT ON METROPOLITAN FISCAL RELATIONS Table 5 (1967).

[30] Keppel, THE NECESSARY REVOLUTION IN AMERICAN EDUCATION 80 (1966).

on local resources, poorer school districts offer inferior educational facilities in terms of class size, teacher training and quality, remedial programs, physical condition of school buildings, quality and quantity of textbooks, science equipment, language laboratories, physical education facilities, counselling and psychological assistance, and other significant facilities and services.[31] As it functions in Illinois, such a system is, as we argue below, unconstitutional.

ARGUMENT

I. The Court Below Failed To Apply The Appropriate Constitutional Criteria And To Analyze Adequately The Constitutional Significance Of The Central Fact That Wide Inter-District Variations In The Value Of Taxable Property Are Responsible For The Educational Inequalities Plaintiffs Allege.

It is the position of Amici that the court below erred in two respects. First, it erred in finding that Illinois education financing statutes were Constitutional under the "reasonableness" standard which it applied. Whatever may be the rational reason for having a statewide school system set up and financed through local subdivisions of the State,[32] no Constitutional justification exists for the financing of public education in such a manner that the amount of public funds available for a child's education depends upon the property values of the neighborhood in which he lives. Secondly, the court below applied the incorrect standard for determining the Constitutionality of the financing statutes. Where fundamental Constitutional rights are involved, as we argue below, even those statutes for which some rational basis might be advanced,

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[31] *See* Conant, *supra*, note 27; Keppel, *supra*, note 30, at 17; Thomas, *supra*, note 22, at 22.

[32] Numerous rational, and Constitutionally acceptable, reasons for the use of local school districts as administrative organs exist and Amici expressly disclaim any intention of challenging their continued use.

will be held invalid if they result in substantial discrimination—as in the present case—particularly where reasonable alternatives are available, as they are here.

In justifying the Illinois system of state school finance because it represented a system of local control [33] which legitimately allowed local communities to fix their individual tax burdens and to decide how highly they valued education, the lower court failed to give adequate weight to Plaintiffs' allegation that their school districts had levied education taxes near the upper limit permitted by Illinois law,[34] and that the educational disparities from which they suffer arise, not from any lack of interest in education, but from the low value of taxable property in their school districts, in relation to the number of students living in them.[35] The State failed to show, and the court erred in finding, that these disparities in taxable property valuation, which the Illinois system of school finance has made determinative of the financial resources available

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[33] It should be noted that the lower court failed to distinguish between local control of administrative functions and revenue raising on a local level. It failed to recognize that the former was not at issue in the lawsuit, and that it was only the latter which was the subject of Plaintiffs' challenge. Prominent authorities are of the opinion that a system of local policy-making and control in no way requires or presupposes that financing also be undertaken locally. *See, e.g.*, Allen, *supra* note 24, at 56.

[34] See A.C. at ¶ 14.

[35] The court mentions the comparative taxable property valuation issue early in its opinion but then ignores it entirely in the opinion's governing pages, except for one reference: "The students also object to having revenues related to property values, apparently without realizing that the equalization grant effectively tempers variations in assessed value by using a hypothetical valuation." (Pl. App. at 11). The court does not explain what it means by "effectively tempers." Since the court elsewhere notes that the average per pupil expenditure in Illinois on a district-by-district basis is $840, a system which guarantees each district $400 per pupil hardly "effectively tempers" the inequalities existing between the poorest district and the average district, much less the richest district. In short, this statement by the lower court is demonstrably wrong.

for Plaintiffs' education, have any rational relationship to the valid purposes of public education.

If the State were to appropriate monies from general revenue for purposes of education it could not, consistently with the Fourteenth Amendment, distribute that revenue to local districts on the sole basis of the value of the property within each district. Such a discriminatory distribution of State funds would be unconstitutional because it would have no rational relationship to the education of all the students in the State.

As this Court has already established: "Such an [educational] opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954). A system whereby children living in districts with less valuable taxable property receive substantially less funds for their education than those living in districts containing more valuable taxable property does not make education "available to all on equal terms." Moreover, to the extent that a distribution of public funds results in giving less to the poor, "lines drawn on the basis of wealth or property, like those of race (citation omitted) are traditionally disfavored." *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 668 (1966). We submit that no State can Constitutionally link the education it provides for each child to the sole basis of the value of taxable property in his school district. *Compare Harper, supra*, at 666, where this Court struck down a state poll tax on the ground that "voter qualifications have no relation to wealth nor to paying or not paying this or any other tax."

Since the State could not discriminate directly against students residing in poorer localities, it should not be permitted to accomplish the same result by dividing its responsibility for equal education with local school districts and failing to supplement the funds raised by the school districts sufficiently to eliminate discrimination. The obli-

gation to provide an education for its citizens rests upon the *State* by operation of *its* constitution.[36] Further, as the facts reviewed in the Statement, above, demonstrate, the State plays a vital role in financing education for all children. State statutes bar any district from taxing its property at a rate higher than a specified maximum, regardless of how greatly the local district might wish to compensate for a low tax base. Likewise, they establish maximum limitations on the indebtedness a local district may incur, despite the fact that the State furnishes no funds for capital purposes. Finally, the State provides from the general revenues about 20% of all funds expended for public education in Illinois. Accordingly, there would be no merit in any contention by the State that it leaves public financing in the hands of its local subdivisions.[37]

In *Griffin* v. *County School Board*, 377 U.S. 218 (1964), the Court struck down a Virginia statute which permitted abdication of State duties by authorizing individual counties to determine whether or not to operate a public school system within their boundaries. While the case turned on a determination that the purpose and effect of the statute was to permit localities to avoid the impact of the desegregation requirement of *Brown*, the Court indicated that the decision by a State to treat one locality differently from another required Constitutionally acceptable reasons. We submit that a State determination which results in supplying one locality with less funds for education than another because it is poorer is not a Constitutionally acceptable reason under *Harper*, *supra*.[38]

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[36] *See* note 1, *supra*.

[37] *Compare* Vidich & Bensman, SMALL TOWN IN MASS SOCIETY 202-206 (Anchor ed. 1960) (discussing the importance of State aid to education in New York State).

[38] While a State may delegate certain of its functions to smaller subdivisions such as cities or counties, it cannot escape accountability for their actions. Such subdivisions are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The number, nature, and

It may be that the State wishes to finance public education primarily through property taxation, and that it is easier to administer such a tax system in the locale where the property is situated. However, this alleged convenience does not justify the discriminatory result apparent here when there are many equally viable tax systems which could achieve the same tax result without discrimination.[39] More importantly, even if the present system were, in some way, rational in the sense of "convenient," such a rational basis would be Constitutionally inadequate under the Fourteenth Amendment because of the substantial inequalities resulting from its use in an area involving basic human rights.

The court below, while conceding that "the inequalities of the existing arrangement are readily apparent" (Pl. App. at 7), upheld the Illinois practice on the grounds that it was neither wholly "arbitrary" nor unsupported by a "rational" policy. (*Id.* at 10-13). The court gathered these standards from cases involving Equal Protection challenges to questions of taxation or economic regulation.[40]

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duration of [their] powers . . . and the territory over which they shall be exercised rests in the absolute discretion of the State." *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178 (1907).

[39] There are several alternatives to the present system which are also administratively convenient: Illinois could set a statewide uniform property tax rate as it now sets a maximum rate, collect the taxes so levied, and return them to the localities on an equal per pupil basis.

Or the State could compute the figure representing the average per pupil tax base for the State and support each district from a combination of state and local funds so that for equal local effort every school district would have the same expenditure level if it made the same effort.

It is not apparent how either method, which would incidentally result in vastly more equal funding throughout the State, is any less "convenient" than the present system of local taxation and retention of the funds raised thereby, coupled with supplemental State payments on a flat grant or equalizer basis.

[40] *E.g.*, *Allied Stores* v. *Bowers*, 358 U.S. 522 (1959); *Metropolitan Ins. Co.* v. *Brownell*, 294 U.S. 580 (1935); *Metropolis Theatre Co.* v. *Chicago*, 228 U.S. 61 (1913).

While Amici maintain that even by those standards the Illinois practices are defective, the Constitutional inquiry need not be so strictly limited because recent decisions of this Court clearly indicate that when challenged State practices tread unequally on essential human rights[41] and especially when further, they in fact redound to the disadvantage of the poor,[42] a more thorough judicial review of the Constitutional validity of the policies supposedly supporting the classification is required: testing whether those policies are adequate in light of the harm inflicted. This principle, a wise advance over the simplistic and mechanical quality of the "invidious discrimination" formula, was implicit in many of these decisions[43] and now has been affirmed more clearly still in the area of voting: "States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State," *Carrington* v. *Rash*, 380 U.S. 89, 96 (1965); "this does not necessarily mean that . . . [the] plan is irrational . . . we conclude simply that . . . [it] is impermissible for the States under the Equal Protection Clause," *Reynolds* v. *Sims*, 377 U.S. 533, 575 (1964);[44] "in determining whether or not a State law

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[41] *E.g.*, *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942).

[42] *E.g.*, *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966); *Douglas* v. *California*, 372 U.S. 353 (1963); *Griffin* v. *Illinois*, 351 U.S. 12 (1956).

[43] *See generally* Horowitz & Neitring, Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State, 15 U.C.L.A. L. Rev. 787 (1968).

[44] The court below found *Reynolds* inapplicable on the ground that the case "strengthened citizens' voting rights because the Constitution specifically enfranchises all citizens equally, not as a result of general antipathy to historic geographical divisions." (See Pl. App. at 15). Actually, however, the Constitution confers in terms no right or equal right to vote; rather, voting—just as education— is simply one of those interests protected against unduly unequal treatment by the Equal Protection Clause of the Fourteenth Amendment.

violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification," *Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968).

The right to education in a State which provides public education is an essential legal right to be accorded the same Constitutional protection as the other rights referred to above. The aspirations and character of every individual are thoroughly dependent on the education he is able to acquire. Education, like free speech and voting, lies near the heart of the democratic enterprise.[46] For the law's recognition of these educational values, there is no better citation than the familiar passage in this Court's historic opinion in *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954):

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

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[45] For indications of the relevance of available alternatives in the area of education, *see Green* v. *County School Board*, 391 U.S. 430, 439 (1968).

[46] It is for these reasons that States require that individuals undergo education, and that courts uphold these requirements. *Meyer* v. *Nebraska*, 262 U.S. 390, 402 (1923).

Accordingly, when a State provides public education unequally, courts should not deny Plaintiffs a trial on the merits merely because they can imagine some hypothetical rationale for the State's actions which may not be supported by the facts as proved. Since the court below made this error and thereby failed to apply the appropriate Equal Protection standards, Amici urge that this Court remand the case to the court below with instructions to apply the proper standards to the facts of this case.[47]

II. The Case Is Not Nonjusticiable Because Of A Lack Of Judicially Manageable Standards.

In dismissing the Plaintiffs' case for failure to state a cause of action, the lower court also asserted that no standard of public educational equality could be judicially defined should the existing Illinois statutes be found invalid. Thus, without correctly postulating the central constitutional wrong in issue (inequality resulting from dependence for educational funding upon local districts with unequal property tax bases), the court hypothesized inability in any event to define the applicable Constitutional remedy. However, this Court has often held that where a State law transgresses the Equal Protection Clause, courts will so rule without defining to the legislature alternative measures which would meet Constitutional requirements. *See, e.g., Williams* v. *Rhodes*, 393 U.S. 23, 34 (1968); *Baker* v. *Carr*, 369 U.S. 186 (1962).

[47] Should this Court feel unprepared to decide this issue, in effect "in the first instance," "unillumined by the consideration of a single judge" below, *United States* v. *International Union*, 352 U.S. 567, 591 (1957), it might well consider a remand to the district court with instructions that that court fully consider and assess the Constitutional significance of the allegation that Plaintiffs' major school inequalities stem from nothing but inter-district inequalities in property value. "We are in accord with the [Court's] view that it is inexpedient to determine grave constitutional questions on a demurrer to a complaint . . . if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer." *Borden Farm Products, Co.* v. *Baldwin*, 293 U.S. 194, 213 (1934) (Stone and Cardozo, JJ., concurring).

Thus, the degree and character of the irrational inequalities in educational financing, demonstrable in the present case, can result in a finding that Equal Protection has been breached, while still leaving the legislatures free to adopt ameliorative measures such as school district apportionment, school fund supplements, or reallocation of locally raised taxes, which would conform with Equal Protection guarantees.

Partly because it failed to apply the appropriate Equal Protection standards, the court below apparently felt that it would become embroiled in day-to-day school administration if it decided that Plaintiffs had stated a cause of action. Yet, it is clear that such involvement is unnecessary to a resolution of *this* case favorable to Plaintiffs. This Court is not required to select the standard considered and rejected by the court below: expenditure tied to educational "need." Instead, the scope of potential remedies is broad and easily manageable by a legislature. Essentially what is required is an effort by a State to allocate educational financial resources in a manner rationally related to the goals of education and consistent with the Equal Protection Clause of the Fourteenth Amendment.

While equal dollar expenditure per pupil is one possibility that a legislature might adopt, a legislature might also rationally, and nondiscriminatorily, conclude that disadvantaged or gifted children require more education and should receive more funds than others. A legislature could rationally authorize expenditures for pilot projects in some districts for experimental purposes without authorizing a similar project in all others. It could determine that costs were higher in some areas of the State and, accordingly, supply more funds per pupil. The legislature could, in short, allocate public funds differentially in all the different ways the district court suggests. (Pl. App. at 9). What it could not do is to continue to have those funds allocated irrationally and arbitrarily by sole

reference and in proportion to school district property values.

If the court below believed, as it seemed to, that the Constitutional standard Plaintiffs sought required that the citizens of any local area be limited in the amount of funds they could freely choose to spend on public education, it was in error. On the contrary, as the court's own opinion reveals, Plaintiffs suggested a method that would permit unlimited local effort on behalf of education, while in no way discriminating against poorer districts making an equal effort.[48] Further, other equally effective methods of preserving local effort are also available (*see* J.S. at 15).

Hence, because there are judicially manageable standards to govern the instant case, Amici contend that the case is justiciable.

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[48] "[T]he state could siphon off all money in excess of $x per pupil which was produced by a given tax rate, in effect eliminating variations in local property values while leaving the districts free to establish their own tax rate. . . . For example, if a district only levied a 1% tax rate, it could keep only $400 per pupil, regardless of the absolute dollars produced. On the other hand, the state would also guarantee $400 per pupil to units imposing to 1%. At higher rates, such as 4%, the state would thus substantially aid districts with low valuations, deriving most of its funds from wealthy districts which produced far more than $400 per pupil by a 1% rate." [See Pl. App. at 8 and n. 15].

CONCLUSION

For the reasons stated above, Amici respectfully suggest that this Court adopt either of two methods to dispose of the instant case. First, if this Court feels that no further briefing or oral argument is appropriate at this pleading stage, it should note probable jurisdiction and summarily reverse and remand the case for trial on the merits.[49] Second, if this Court wishes further briefs and oral argument on the appropriate Constitutional standards governing this controversy, it should also note probable jurisdiction, receive those briefs and arguments, and then remand the case to the court below for a full trial on the merits governed by the standards to be set forth by this Court.

Respectfully submitted,

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[49] See note 47, *supra*.